THE RELATIONS BETWEEN THE UNITED STATES AND PORTO RICO

JURIDICAL ASPECTS

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THE INSULAR CASES AND THE STATUS OF PORTO RICO.

Downes v. *Bidwell.*[80] This is really the most important judgment in all the Insular Cases so far as a determination of the present status of Porto Rico is concerned. It is interesting because in it the now famous doctrine of non-incorporation is developed. It will be well, however, to state at the outset that in this case there was no majority opinion of the court and that the decision was reached merely by the concurrence of a majority of the judges in what is styled in the syllabus of the case as the conclusion and judgment of the court.

In view of the great diversity of opinion evinced by the judges in this case, as will later appear, it was regarded at the time by very able lawyers and commentators of note as a very doubtful precedent which the court might not feel in the future bound to accept as the settled law of the land. So far, however, it has stood the test of time, and although the recent passage of the so-called Jones-Shafroth Act, extending to Porto Ricans a large measure of self-government and the privilege of American citizenship,[81] seemed to reopen the question of the juridical status of Porto Rico and require the rejection or modification of the doctrines laid down or relied upon in this important decision, its conclusions have been affirmed and ratified and are largely

*This is only a part of a series of articles on the same subject appearing in the AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. IX, pp. 883 et seq., Vol X, pp. 65, 312, Vol. XIII. pp. 483-525.

[80] 182 U. S. 244.

[81] Public No. 368, 64th Cong. The text of this law will also be found in the Supplement to this JOURNAL, Vol. XI, pp. 66-93; see "Some Historical and Political Aspects of the Government of Porto Rico, in *The Hispanic-American Historical Review*, Vol. II, No. 4.

accepted at the present time as a correct expression of the national sense. It is at any rate the only authoritative declaration of the present status of Porto Rico so far made by any competent branch of the government.[82] It is therefore important to examine this decision somewhat at length in order to ascertain and determine the present status of the Island and the particular doctrines upon which that status is supposed to be founded.

The ostensible purpose of the case under consideration was to test the constitutionality of the Foraker Act,[83] and to recover back certain duties exacted and paid under protest upon merchandise brought into the port of New York from Porto Rico after the passage of that Act. The duties in question were exacted under Section 3 of the Act, which provided, "that on and after the passage of this Act all merchandise coming into the United States from Porto Rico and coming into Porto Rico from the United States shall be entered at the several ports of entry upon payment of fifteen per centum of the duties which are required to be levied, collected and paid upon like articles of merchandise imported from foreign countries,"[84] and the question briefly stated, was whether Article I, Section 8, of the Constitution of the United States, providing that "all duties, imposts and excises shall be uniform throughout the United States" was applicable to this case; that is to say, whether this particular provision of the Constitution must be considered as controlling the action of Congress when legislating on the subject for a territory situated as Porto Rico was.

This case differs from the other two already considered[85] in that here the test is not, as there, whether Porto Rico was or was not a foreign country, either in the international or in the constitutional sense, but rather whether the Island had become an integral part of the United States, so as to be included within the purview of the con-

[82] The latest confirmation of this status is to be found in the People of Porto Rico *et al. v.* José Muratti, and the People of Porto Rico *v.* Tapia, recently decided *per curiam* by the Supreme Court on the authority of the case under consideration and other cases mentioned in the docket. (245 U. S. 639.)

[83] U. S. Stat. at Large, Vol. 31, p. 77.

[84] See "Some Historical and Political Aspects of the Government of Porto Rico," *supra*, note 81.

[85] This JOURNAL, Vol. X, p. 317 et seq.

stitutional provision aforementioned, and the question therefore involved, in substance, a determination of the juridical status of the Island from the point of view of constitutional law.

Internationally, there could hardly be any question that Porto Rico was, and is, by virtue of the treaty of cession, an integral part of the United States. Upon the formal exchange of the ratifications of that treaty Porto Rico ceased to be a Spanish province; it ceased to be Spanish territory subject to the Crown of Spain. In contemplation of law, the treaty of cession operated to sever all political connections between Porto Rico and the mother country; so that, in respect to Spain, Porto Rico became a foreign country, its Spanish nationality being entirely destroyed by the transfer. It is clear that the same act which divested the Island of its Spanish nationality gave to it, as a sort of international compensation, the nationality of the United States. That such result was equally contemplated by the high contracting parties is apparent in the treaty itself, where they repeatedly speak of the future "nationality of the territory" over which Spain relinquished or ceded her sovereignty.[86] If this was not the result contemplated by them, what then was the nationality referred to in this expression? In the case of Cuba it might be assumed that the contracting parties contemplated Cuban nationality, because as to that island Spain was only *relinquishing* her claim of sovereignty over and title to the island.[87] But as to Porto Rico, could it be said that the contracting parties had in mind a Porto Rican nationality? Evidently not, because the words of the treaty in respect to this Island leave no room for doubt as to the fact that an *absolute transfer* of sovereignty was intended. The words of the treaty are: "Spain cedes to the United States the Island of Porto Rico."[88] This provision, accord-

[86] See specially Article IX.

[87] Article I of the Treaty of Paris contains the following provisions: "Spain relinquishes all claim of sovereignty over and title to Cuba. And as the Island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property."

[88] Article II of the Treaty of Paris is in full as follows: "Spain cedes to the United States the Island of Porto Rico and other Islands now under Spanish

ing to well established principles of international law, necessarily implies an absolute transfer of sovereignty over the ceded territory and a complete change in the nationality thereof in favor of the acquiring state. Thus in respect to Porto Rico, the nationality mentioned in the treaty can be no other than the nationality of the United States. The Supreme Court itself, in spite of the great division of opinion among its learned members upon other aspects of the whole question, has expressly and unanimously declared in *Gonzales* v. *Williams*,[89] which is another of the Insular Cases, that by the act of cession the nationality of Porto Rico became American instead of Spanish. It follows therefore that Porto Rico must be internationally considered as incorporated into and forming an integral part of the United States.

But while there cannot be much doubt upon these simple propositions affecting the status of Porto Rico in an international way, it is a matter of much perplexity, in view of the great diversity of opinion expressed in the case under consideration, to determine the more complicated question of the present status of Porto Rico in the constitutional sense. It may be observed that in determining, as in this case, whether a specific provision of the Constitution is applicable to a given territory, it may not be absolutely necessary to fix the status of such territory in an affirmative manner; it may be enough, perhaps, to negative the existence of the particular status required by the provision in question.

Thus, the views of Mr. Justice Brown and Mr. Justice White, while conflicting as to the reasons upon which they base their conclusions, reach the same decision as to the inapplicability of the clause. Mr. Justice Brown makes his decision depend on the proposition that the clause in question is only applicable to the States as such; that Porto Rico is not a State, and that, in consequence, the said clause is not applicable to that Island. Mr. Justice White, and with him Mr. Justice Shiras and Mr. Justice McKenna, on the other hand, declares, that the said clause is applicable not only to the States, but also to a terri-

sovereignty in the West Indies, and the Island of Guam in the Marianas of Ladrones." See in this connection this JOURNAL, Vol. IX, pp. 896-897; Vol. X, pp. 67-69, 72-74.

[89] 192 U. S. 1.

tory which has been incorporated into and forms a part of the United States; but they hold that Porto Rico has not been incorporated and therefore the clause in question has no application to it. Mr. Justice Gray, by a somewhat different line of reasoning, follows the conclusion of Mr. Justice White and his associates, while Mr. Chief Justice Fuller, Mr. Justice Harlan, Mr. Justice Brewer and Mr. Justice Peckham dissent upon the ground that the revenue clause in question was applicable throughout the United States, that Porto Rico was a part of the United States, and therefore, that the said clause was applicable to Porto Rico, at any rate after the passage of the Foraker Act. Mr. Justice Harlan expressly declared in a separate opinion that Porto Rico became, after the ratification of the treaty with Spain, a part of the United States in respect to all its territory and people, and that Congress could not thereafter impose any duty, impost or excise with respect to that Island or its inhabitants which departed from the rule of uniformity established by the Constitution.

It is important to notice that in these Insular Cases, the Supreme Court was divided into two equal groups of judges, with Mr. Justice Brown holding the balance of power between them.[90] In the case under consideration the court divided in opinion generally upon the status of Porto Rico and specially upon the applicability of the revenue clauses of the Constitution. In the first instance, Mr. Justice Brown reasserts his former position as to the status of the Island, in accord with the opinion of the group made up by his former assenting colleagues [Chief Justice Fuller and Justices Harlan, Brewer and Peckham]; seeking, however, to find a plausible and rational solution of the problem which is uppermost in his mind, he ventures to set up a new doctrine which finds no support among his brethren, but compels him to join in the conclusion of the other group, composed of Justices White, Shiras, McKenna and Gray.

The results sought to be avoided by Mr. Justice Brown and Mr. Justice White and his followers in this case were difficulties inherent in the problem connected with a legitimate application of the provisions of the Constitution in the management of the Philippine Islands. Mr. Chief Justice Fuller, Mr. Justice Harlan, Mr. Justice

[90] See this JOURNAL, Vol. X, pp. 318, 327

Brewer and Mr. Justice Peckham were not so much concerned with these difficulties as they were with the application of what they believed to be the clear and indisputable law of the case, according to the whole constitutional history and precedents laid down by the Supreme Court in the past.

This gave rise for a time to the question whether the case under consideration settled at all the status of Porto Rico under the Foraker Act, and whether the doctrine of non-incorporation developed by Mr. Justice White was in reality a doctrine sustained by a majority of the court. In our estimation the majority only sustains the judgment and decision of the court in so far as it holds that the revenue clause in question does not apply to the Island. Beyond this conclusion there is no majority at all. As to the status of the Island, it seems evident that if there is a majority, it is the other way. The doctrine in question is sustained only by Mr. Justice White and two of the other three justices who concurred in his views; Mr. Justice Brown nowhere in this case signifies his assent to the doctrine, but still seems to agree, as in the *De Lima* case, with his now dissenting brethren, that Porto Rico is a part of the United States, although not in the sense of being included within the custom union of the States. His doctrine that the clauses of the Constitution like the one in question which are operative only "throughout the United States," extend to the territories only when and in so far as Congress shall direct, does not seem, on the other hand, to find any support among his brethren, who quite unanimously reject the idea that the Constitution does not extend of its own force to the territories. Mr. Justice White, in stating his eight propositions on the force and applicability of the Constitution in the territories, expressly declared that it is not to be supposed that "the Constitution may or may not be applicable at the election of any agency of the government," and that "Congress in governing the territories is subject to the provisions" thereof.

Examining the opinions of the judges somewhat more in detail, we find that had Mr. Justice Brown agreed to the proposition that the uniformity clause in question was equally applicable to the territories as to the States, which is practically admitted by all the judges, and specially and more frankly by the dissenting members of the court,

the decision would have been just the reverse of what it was, for in that case he would have joined with the dissenting group of justices headed by the Chief Justice and changed their opinion into the actual judgment of the court, with the result that the novel doctrine of non-incorporation would have been converted merely into a doctrine of the dissenting opinion, as in the *De Lima* and *Dooley* cases decided the same day, and might never have acquired any importance in the judicial history of this country. But Mr. Justice Brown could not see his way clear to do so. Influenced by the magnitude of the immense problems then confronting the American people, he concluded his opinion by saying:

> Patriotic and intelligent men may differ widely as to the desirableness of this or that acquisition, but this is solely a political question. We can only consider this aspect of the case so far as to say that no construction of the Constitution should be adopted which would prevent Congress from considering each case upon its merits, unless the language of the instrument imperatively demands it. A false step at this time might be fatal to the development of what Chief Justice Marshall called the American Empire. Choice in some cases, the natural gravitation of small bodies towards large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant possessions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that, ultimately, our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action.
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> We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker Act is constitutional, so far as it imposes duties upon imports from such Island, and that this plaintiff cannot recover back the duties exacted in this case.

Writers and commentators have seen in these conclusions of Mr. Justice Brown an unavoidable inconsistency with, if not an open contradiction of, his previous opinion in the *De Lima* case, in which he expressly declared, that "by the ratification of the Treaty of Paris

the Island became territory of the United States." Does not, however, the expression territory appurtenant and belonging to the United States mean and imply in his line of reasoning exactly the same thing as territory of the United States? Much of this charge of inconsistency and contradiction brought against Mr. Justice Brown in the consideration of the Insular Cases is probably due to the fact that his opinion in the case under consideration has been largely misunderstood. His opinion merely holds that Porto Rico was not a part of the United States within the meaning of the revenue clauses of the Constitution. These clauses, in his estimation, had application only among the several States, and his definition of the status of Porto Rico as a territory appurtenant and belonging to the United States is clearly aimed to negative the idea that the Island was a part of the United States in the peculiar sense that he gave to those words. When viewed in this light, it becomes quite apparent that there is no such inconsistency or contradiction in his conception of the real status of the Island. As defined by him in the case under consideration, such status is logically and juridically the same thing as he defines it in the *De Lima* case, namely, that of a territory of the United States, because in his opinion the United States was a union of States, the territories being merely property of the United States.

Turning now to Mr. Justice White's opinion, we see, as we have already noticed, that he joins also in the conclusion and judgment of the court to the extent that the Foraker Act was constitutional in so far as it imposed duties upon imports from Porto Rico and that the plaintiff could not recover back the duties exacted in the case. This conclusion, of course, is predicated primarily upon the general proposition that the revenue clauses of the Constitution have no application to the Island. As to the proposition whether Porto Rico was or not a part of the United States, he evidently concurred in the conclusion of Mr. Justice Brown that the Island "is a territory appurtenant and belonging to the United States, *but not a part of the United States* within the meaning of the revenue clauses of the Constitution," but a careful study of the two opinions will disclose the fact that there is no harmony between them in respect to the sense in which these important declarations are to be interpreted. While Mr. Justice Brown,

on the one hand, is properly to be taken as meaning purely and simply that Porto Rico was not a part of the United States because the Island was not a State of the Union but only a territory—like any other territory of the United States, so far as the status of the territories in general is concerned—Mr. Justice White, upon the other hand, evidently holds that Porto Rico is not a part of the United States in a different and more complicated sense. The distinction involves the famous "doctrine of non-incorporation," which has been so much attacked and criticized by eminent lawyers and writers as inconsistent with general principles, the Constitution of the United States and former precedents laid down by the Supreme Court. This doctrine is indeed the keynote in Mr. Justice White's opinion, not only in the case now under consideration, but also in all the other Insular Cases, in which he has always taken such an important part.

The grounds upon which the said doctrine is founded have been frequently attacked as rather obscure and conflicting with certain recognized principles of international and constitutional law, and former precedents of the Supreme Court. Its soundness, however, is not to be found so much in acknowledged principles of law and precedents of the court as in the fact that it is a new constitutional theory perfectly warranted by the Constitution itself and international law, and which is, moreover, quite necessary for the successful administration of newly acquired territories by the United States.

To begin with, Mr. Justice White states eight propositions of law relating to the applicability and force of the Constitution in the territories. From these propositions, which are amply sustained by the whole constitutional history of the country and corroborated by numerous precedents laid down by the Supreme Court, he concludes that in legislating for Porto Rico, Congress was only empowered to act within the Constitution and subject to its applicable limitations, and that every provision of the Constitution which applies to a country situated as was that Island, was potential in Porto Rico. He then says that the "determination of what particular provision of the Constitution is applicable, generally speaking, in all cases, involves an inquiry into the situation of the territory and its relations to the United States."

The learned Justice then referred to some previous decisions of the court as illustrating the principles by him enunciated and said that although, as a general rule, the status of a particular territory has to be taken into consideration when the applicability of any provision of the Constitution is questioned, it does not follow when the Constitution has absolutely withheld from the government all power on a given subject, that such an inquiry is necessary. He then establishes a distinction between the restrictions which regulate a granted power and those which withhold all authority on a particular subject. The former would seem to depend for their applicability upon the status of the particular territory in question, while the others would in the nature of things apply in such territories irrespective of their particular status. As the constitutional restrictions involved in the case under consideration evidently belonged to the first category of this division, it must follow, according to his views, that the question relative to the constitutionality of the provision of the Foraker Act in controversy was to be answered by determining the status of Porto Rico at the time of the passage of the Act in question.

According to the general reasoning in Mr. Justice White's opinion, the question before the court was not merely whether, as in the cases of discovery, military conquest or the like, Porto Rico had been constitutionally placed under the authority, jurisdiction, or control of the United States, nor even whether by virtue of the cession from Spain and the acceptance and occupation by the United States, it had absolutely become the subject of territorial proprietorship by the United States; but whether at the time of the passage of the Act in question it had been *incorporated,* that is to say, whether it had been allowed to form an integral part of the United States, as composed of States and Territories, so that it might be considered as invested with all the constitutional attributes attending such a state of incorporation.

Entering upon an extended discussion of the conflicting claims of counsel in respect to the effects of the acquisition upon the status of the Island, he cites many instances and examples of both a mere *occupation* and a complete acquisition of foreign or vacant territory effected through any of the well known methods sanctioned by the law of nations, whether by virtue of specific direction of Congress or as

the result of a successful war or even on account of a treaty stipulating for a temporary or permanent occupation or the absolute cession of the territory in question, in order to show that while in all such cases the said territory may be, internationally, under the authority, jurisdiction, control, and even the complete sovereignty of the United States, it can nevertheless not be considered as forming an integral part of the United States, but must remain, until Congress shall manifest its determination in the matter, in a middle ground of disincorporation between an internationally American and a constitutionally foreign condition.

Referring to the ability of the treaty-making power to provide for or against an immediate incorporation of the acquired territory into the United States, Mr. Justice White said:

> There has not been a single cession made from the time of the Confederation up to the present day, excluding the recent treaty with Spain, which has not contained stipulations to the effect that the United States through Congress would either not disincorporate or would incorporate the ceded territory into the United States. . . .
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> When the various treaties by which foreign territory has been acquired are considered in the light of the circumstances which surrounded them, it becomes to my mind clearly established that the treaty-making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, express or implied, of Congress; and that no question to the contrary has ever been even mooted.

Then he went on to declare that in order to appreciate this it is essential to bear in mind what the words "United States" signified at the time of the adoption of the Constitution. Stating that when by the treaty of peace with Great Britain the independence of the United States was acknowledged, it is unquestioned that all the territory within the boundaries defined in that treaty, whatever may have been the disputes as to title, substantially belonged to particular States, he said that the entire territory was part of the United States, and that all the native white inhabitants were citizens of the United States and endowed with the rights and privileges arising from that relation. Then he said:

> When the Northwest Territory was ceded by Virginia, it was expressly stipulated that the rights of the inhabitants in this regard

should be respected. The ordinance of 1787, providing for the government of the Northwest Territory, fulfilled this promise in behalf of the Confederation. Without undertaking to reproduce the text of the ordinance, it suffices to say that it contained a bill of rights, a promise of ultimate statehood, and it provided (italics mine) that "The said territory and the States which may be formed therein *shall ever remain a part of this Confederacy of the United States of America,* subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made, and to all the acts and ordinances of the United States in Congress assembled, conformably thereto" . . . Thus is was that, at the adoption of the Constitution, the United States, as a geographical unit and as a governmental conception both in the international and domestic sense, consisted not only of States, but also of territories, all the native white inhabitants being endowed with citizenship, protected by pledges of a common union, and, except as to political advantages, all enjoying equal rights and freedom, and safeguarded by substantially similar guaranties, all being under the obligation to contribute their proportionate share for the liquidation of the debt and future expenses of the general government. . . .

It will be readily observed that these declarations of Mr. Justice White as to the import of the words United States are quite different from the conclusions of Mr. Justice Brown in respect to the same subject.

Following his own line of reasoning, Mr. Justice White proceeds to show how the provisions of the famous Northwest Territory Ordinance were successively extended by Congressional action to such other territories as were ceded by individual States to the United States, in order to effect their incorporation into the United States, and reviews the history of the acquisitions by treaty from France, Spain, Mexico and Russia, which are the acquisitions more closely resembling that of Porto Rico by the United States.

As to Louisiana, which was acquired from France by the treaty of 1803, he reached the conclusion that, in accordance with the prevailing view to the effect that "although the treaty of cession might stipulate for incorporation and citizenship under the Constitution, such agreements by the treaty-making power were but promises depending for their fulfillment on the future action of Congress," the newly acquired territory "was governed as a mere dependency, until . . . it was by the action of Congress incorporated as a Territory of

the United States and the same rights were conferred in the same mode by which other Territories had previously been incorporated, that is, by bestowing the privileges of citizenship and the rights and immunities which pertained to the Northwest Territory."

As to Florida, which was acquired from Spain by the treaty of 1819, drafted, although with slight modification, in accordance with the precedent afforded by the treaty ceding Louisiana, he concludes that Congress, acting under the precedent afforded by the Louisiana case, adopted a plan of government which was wholly inconsistent with the theory that the territory had been incorporated, and that finally "an act was passed . . . which, while not referring to the Northwest Territory ordinance, *in effect endowed the inhabitants of that territory with the rights granted by such ordinance.*"

Respecting California, which was acquired from Mexico by the treaty of 1848 through a readjustment of boundaries between the two countries instead of by an outright cession as in the previous treaties, Mr. Justice White said that "the controversy which was then flagrant on the subject of slavery prevented the passage of a bill giving California a territorial form of government, and California after considerable delay was therefore directly admitted into the Union as a State." He further said that, after the ratification of the treaty, various laws were enacted by Congress, which in effect treated the territory as acquired by the United States, and that the executive officers of the government, conceiving that these Acts were an implied or express ratification of the provisions of the treaty by Congress, acted upon the assumption that the provisions of the treaty were operative, and hence incorporation had thus become effective. As to this case, he said:

> Ascertaining the general rule from the provision of this latter treaty and the practical execution which it received, it will be seen that the precedents established in the cases of Louisiana and Florida were departed from to a certain extent; that is, the rule was considered to be that where the treaty, in express terms, brought the territory within the boundaries of the United States and provided for incorporation, and the treaty was expressly or impliedly recognized by Congress, the provisions of the treaty ought to be given immediate effect. But this did not conflict with the general principles of the law of nations which I have at the outset stated, but enforced it, since the

action taken assumed, not that incorporation was brought about by the treaty-making power wholly without the consent of Congress, but only that as the treaty provided for incorporation in express terms, and Congress had acted without repudiating it, its provisions should be at once enforced.

In respect to Alaska, which was acquired from Russia by the treaty of 1867, Mr. Justice White stated that it was sufficient to say that that treaty also contained provisions for incorporation and was acted upon exactly in accord with the practical construction applied in the case of the acquisition from Mexico. "However," he said, "the treaty ceding Alaska contained an express provision excluding from citizenship the uncivilized native tribes, and it has been nowhere contended that this condition of exclusion was inoperative because of the want of power under the Constitution in the treaty-making authority to so provide. . . . The treaty concerning Alaska, therefore, adds cogency to the conception established by every act of the government from the foundation—that the condition of a treaty, when expressly or impliedly ratified by Congress, becomes the measure by which the rights arising from the treaty are to be adjusted." Then follows a consideration of various other acts of the government which to him are wholly inexplicable except upon the theory that it was admitted that the Government of the United States had the power to acquire and hold territory without immediately incorporating it. He cites, for instance, the simultaneous acquisition and admission of Texas, which was admitted into the Union as a State by joint resolution of Congress of March 1, 1845, instead of by treaty. He could not understand to what grant of power under the Constitution this action could be referred unless it was admitted that Congress is vested with the right to determine when incorporation arises.

Summing up his conclusions as to the ability of the treaty-making power to provide for or against an immediate or prospective incorporation of the acquired territory, he said:

It is, then, as I think, indubitably settled by the principles of the law of nations, by the nature of the government created under the Constitution, by the express and implied powers conferred upon that government by the Constitution, by the mode in which those powers have been executed, from the beginning, and by an unbroken line of

decisions of this court, first announced by Marshall and followed and lucidly expounded by Taney, that the treaty-making power cannot incorporate territory into the United States without the express or implied assent of Congress, that it may insert in a treaty conditions against immediate incorporation, and that on the other hand when it has expressed in the treaty the conditions favorable to incorporation they will, if the treaty be not repudiated by Congress, have the force of law of the land, and therefore by the fulfillment of such conditions cause incorporation to result. It must follow, therefore, that where a treaty contains no conditions for incorporation, and, above all, where it not only has no such conditions, but expressly provides to the contrary, incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.

Coming right down to the application of his doctrine to the case under consideration, Mr. Justice White said:

Does, then, the treaty in question contain a provision for incorporation, or does it, on the contrary, stipulate that incorporation shall not take place from the mere effect of the treaty and until Congress has so determined?

Here Mr. Justice White quotes Articles II, IX and X of the Treaty of Paris, and says:

It is to me obvious that the above quoted provisions of the treaty do not stipulate for incorporation, but on the contrary, expressly provide that the "civil rights and political *status of* the native inhabitants of the territories hereby ceded," shall be determined by Congress.

When the rights to which this careful provision refers are put in juxtaposition with those which have been deemed essential from the foundation of the government to bring about incorporation, all of which have been previously referred to, I cannot doubt that the express purpose of the treaty was not only to leave the *status* of the territory to be determined by Congress but to prevent the treaty from operating to the contrary.

Referring to the contention that the Foraker Act was to be taken as a ratification of the treaty and that incorporation had therefore taken place, he said:

Of course, it is evident that the express or implied acquiescence by Congress in a treaty so framed cannot import that a result was

brought about which the treaty itself—giving effect to its provisions—could not produce. And, in addition, the provisions of the act by which the duty here in question was imposed, taken as a whole, seem to me plainly to manifest the intention of Congress that for the present at least Porto Rico is not to be incorporated into the United States.

In conclusion, Mr. Justice White arrives at an unequivocal statement of his conception of the status of Porto Rico, and reached a final disposition of the case, by saying:

The result of what has been said is that whilst in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the Island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence, the impost in question assessed on merchandise coming from Porto Rico into the United States after the cession was within the power of Congress, and that body was not, moreover, as to such imposts, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the Constitution just referred to was not applicable to Congress in legislating for Porto Rico.

As will be readily seen, these declarations of Mr. Justice White clearly establish the fact that, while he reached the same conclusion as to a decision in the case, his conception of the status of Porto Rico was clearly different from that entertained by Mr. Justice Brown. It would seem, therefore, that, as already suggested, the case under consideration is no authority for a determination of the status of Porto Rico, because as to this particular point there is no majority of the court. Taking into consideration, however, subsequent decisions of the Supreme Court[91] clearly approving the doctrine of non-incorporation sustained by him, it must be admitted that the opinion of Mr. Justice White in this case contains the prevailing doctrine and must be considered as the main authority for the status of Porto Rico as it is

[91] Hawaii *v.* Mankichi, 190 U. S. 197; Dorr *v.* U. S., 195 U. S. 138; Rassmussen *v.* U. S., 197 U. S. 516; Kopel *v.* Bingham, 211 U. S., 468; Dowdell *v.* U. S., 221 U. S. 91; The People of Porto Rico *v.* Rosaly, 227 U. S. 270; Ocampo *v.* U. S., 234 U. S. 91; and the recent cases decided per curiam: The People of Porto Rico et al. *v.* Carlos Tapia, 245 U. S. 639, and The People of Porto Rico et al. *v.* José Muratti, 245 U. S. 639.

understood to be at the present time, namely, a mere dependency, a possession, or, technically, an unincorporated territory of the United States.

Examining the other opinions in the case under consideration, we find that Mr. Justice Gray's concurring opinion, while rather difficult to analyze, does not follow the same lines of reasoning of Mr. Justice White's opinion.

As to the dissenting opinions, it may be sufficient to say that they, in the main, sustain the position of the court in the cases of *Dooley* v. *United States*[92] and *De Lima* v. *Bidwell*,[93] already considered,[94] rejecting both Mr. Justice White's doctrine of non-incorporation and that of Mr. Justice Brown relative to the application of the Constitution to the territories. They also maintain the proposition that Porto Rico was a territory of the United States and that the revenue clauses in question were in force in the Island as being applicable *throughout* the United States. Mr. Justice Harlan's opinion is particularly worthy of notice for the vigor of his contentions and his clarity in the enunciation of doctrines which, but for the Philippine adventure, might have been applied by a unanimous court in the consideration of the Insular Cases.

Part III.

1. The doctrine of non-incorporation: its application; its effects; its value as a constitutional asset.

From a careful consideration and study of Mr. Justice White's opinions in the so-called Insular Cases, and especially of his extended opinion in the case of *Downes* v. *Bidwell*,[95] and subsequent opinions by him and other members of the Supreme Court,[96] the following propositions may be collected.

The doctrine of non-incorporation is grounded in the first place upon the undoubted principle that every nation has the right of determining for itself the status of such territories as it may acquire. This

[92] 182 U. S. 222.
[93] 182 U. S. 1.
[94] This Journal, Vol. X, pp. 318 and 321.
[95] *Supra*, p. 490.
[96] *Supra*, note 90.

right legally inheres in the general principle of sovereignty, and is just as perfect in the United States as in any other so-called sovereign nation of the world. It is obvious that in this country, where the sovereignty of the nation resides in the people, the determination of the status of newly acquired territory belongs, in the first instance, to the people of the United States. But these people, as at present constituted and organized as a nation, do not act directly in the matter of exercising their sovereignty in any particular case, but have, in a general way, expressed their will in a written Constitution, the provisions of which, in each particular case, constitute a guiding light for those entrusted with the powers and duties of government. The Constitution does not contain any express provisions in this respect, but taking into consideration the nature of the government created under that instrument it is a fundamental part of the doctrine of non-incorporation that the power to fix the status of newly acquired territories in all cases clearly devolves *eo instanti* upon the Congress composed of the Senate and the House of Representatives. It is also a part of this doctrine that in cases where there is a treaty providing for incorporation, this will take effect only if the treaty is not repudiated, but accepted and acted upon by Congress. And it is also held that when the treaty contains no conditions for incorporation and, *a fortiori,* when the treaty not only has no such conditions but expressly provides to the contrary, incorporation does not arise until Congress shall determine that the acquired territory should be taken into and made a part of the United States.

It may be added that in the discharge of its responsibilities, Congress may defer the incorporation of newly acquired territory as long as it shall see fit; or it may, in the pursuance of a different policy, embracing considerations of both national and international nature, resolve to abandon or reject altogether the purpose to incorporate, as in the case of the Philippine Islands, and establish the territory as an independent government, bound to the United States by indissoluble ties of mutual protection and friendship. It may further constitute the said territory and people into an autonomous commonwealth, bound to the United States by such outward evidences of sovereignty or by such ties of dependency as may be deemed essential

and indispensable for the protection and security of the United States or for the advancement of its commercial and financial interests or its political or military prestige.[97] There is no doubt that in the determination of each particular case, Congress will feel bound to discharge the great duties imposed upon it not only with that sense of responsibility which it owes to the people of the United States, but also with a due regard for the interests and wishes of the peoples concerned in such determination.

In the meantime, and until public opinion has crystallized into some form of solution, the territory in question is held to be, according to this doctrine of non-incorporation, in the condition of a colonial possession, waiting, so to speak, upon the decision of Congress.

In contrast with the status of such territories as have been already incorporated into the United States, the condition of the newly acquired territory is generally described as denoting a status of non-incorporation preceding that of incorporation. For this reason, the efforts of a good many able minds have been directed for the last twenty years to determine in some practical manner the precise conditions which may be required to bring about the change from the state of non-incorporation into that of incorporation. These efforts, however, have in most every case resulted in failure. The reason lies in the fact that, as a rule, the attempt has been made to define the status of incorporation as comprising such and such characteristic features relating to the organization of the local government and to such and such others which pertain to the political status and civil rights of the native inhabitants of the territory in question, without a proper regard to the all-important consideration that incorporation is merely a question of intention, the intention of Congress to incorporate. Thus when the fact of incorporation comes up as depending on the interpretation of an Act of Congress relating to newly acquired territory, the question is not what are the particular features of this Act in respect to the organization of local government or to the civil rights and political status of its inhabitants, but rather,

[97] See a very illuminating article relating to this question, although upon a different subject, by George A. Malcolm in Am. Law. Rev., Vol. LI, No. 4, p. 543.

does such an Act clearly manifest the intention of Congress to incorporate? Or does it, on the contrary, show a deliberate purpose on the part of Congress not to incorporate? In all cases, Congress does manifest a purpose either to incorporate or not to incorporate; and when, from the provisions of the Act, it clearly appears that the intention of Congress has been not to incorporate, but to leave the territory in question in its condition of non-incorporation, it would be idle to contend that the effect of the Act was to bring about incorporation just because there are in the act such and such provisions which affect its organization[98] or the civil rights or political status of the inhabitants.

This was peculiarly shown in two recent Porto Rican cases, where it was contended that the granting of American citizenship to the inhabitants of Porto Rico had the effect of incorporating the Island into the United States. The Supreme Court, however, reached a unanimous decision against any such contention upon the authority of *Downes* v. *Bidwell* and other subsequent cases cited by the Court.[99]

From what has been said above it may be inferred that the true rule in respect to incorporation is to ascertain from the general provisions of the Act the real determination of Congress in the matter, without giving particular importance to specific terms, and so long as Congress does not clearly manifest its purpose to incorporate, but,

[98] Organization refers to the government; incorporation to the status of the territory in question. A territory is said to be organized when Congress has legislated for it, establishing a formal civil government therein. See Re Lane, 135 U. S. 443. It is said to be incorporated when it has been allowed to become an integral part of the United States. See Mr. Justice White's opinion, *supra*, p. 490. Thus a territory may be organized and yet not incorporated, or, conversely, it may be incorporated and yet not organized. That Porto Rico is a completely organized territory was justly asserted in Kopel *v.* Bingham, 211 U. S. 469; but see opinion of Mr. Justice Brown in Rassmussen *v.* U. S., 197 U. S., 531. See also The People of Porto Rico *v.* Manuel Rosaly y Castillo, 227 U. S. 270, where it was decided that the government created by the Organic Act has all the attributes of sovereignty as understood under the American system of government.

[99] The People of Porto Rico et al. *v.* Carlos Tapia, 245 U. S. 639, which was an appeal from the District Court of the United States for the District of Porto Rico; and The People of Porto Rico et al. *v.* José Muratti, 245 U. S. 639, which came up in error to and on a writ of *certiorari* to the Supreme Court of Porto Rico.

on the contrary, shows a decided inclination not to do so, incorporation does not take place. Obviously, the intention of Congress may be manifested either expressly or impliedly, in one way or in another, but in all cases the purpose may be ascertained without any great difficulty by examining carefully all the provisions of the Act, and then the question of incorporation is readily answered.

The doctrine of non-incorporation is calculated, as has been seen, to exclude the newly acquired territory from the United States and make it a foreign territory in the constitutional sense, for the purpose of administration, according to the necessities of the case. So far as the application of the provisions of the Constitution is concerned, the principal effect of the doctrine is to withhold from the territory in question the application of all such provisions as might be applied to it, because of their being clearly applicable everywhere *throughout* the United States. This doctrine, however, the same as that of Mr. Justice Brown, does not affect the application of the restrictions of the Constitution which withdraw from the Central Government all authority to act on a particular subject. Thus, for instance, the prohibition of the enactment of *ex post facto* laws and bills of attainder and of conferring titles of nobility, are generally controlling in respect to the newly acquired territory. This is not so, because they are in any way operative in the territory in question, but merely because they deprive Congress of all power to legislate upon such matters. In this sense the condition of Porto Rico differs diametrically from that of the Territories, technically so called, for these are considered and held to be incorporated into and constituting an integral of the United States, with the result that no provision of the Constitution is withheld from them, except only such as specifically refer to the States or which from their very nature can have no application to the Territories as such.

As to the native inhabitants, it is quite apparent that the effect of this doctrine of constitutional exclusion is to withhold from them American citizenship, and place them in a class by themselves, which gives them a condition of peculiar interest and importance, affecting their political status and civil rights. This deserves a separate study; which we shall attempt to make in the succeeding section.

In conclusion it may be said that, although the doctrine of non-incorporation may be, as is claimed by very able and practical lawyers, a pronounced departure from general principles, and precedents of the Supreme Court and constitutional theories scarcely denied by Chief Justice White, it must be admitted that the doctrine is one of the most farsighted pieces of judicial interpretation of the Constitution handed down by the court since the time when Chief Justice Marshall maintained the jurisdiction of the Supreme Court to declare unconstitutional and invalid a solemn Act of Congress, which was in conflict with the provisions of the Constitution of the United States—a jurisdiction, which, however much disputed, criticized or abused either as a political or as a judicial proposition, has always deserved, does deserve and will probably continue for a long time to deserve, the admiration and gratitude of learned, conservative and patriotic Americans. And, so far as the practical results of this doctrine evolved by the present Chief Justice of the Supreme Court are concerned, there can be no controversy as to the fact that it did accomplish a necessary thing, namely, the exclusion of alien territories and peoples acquired by treaty or by conquest—an exclusion which, although particularly intended at the time in respect to the Philippines, is extended as the *suma providentia* of this doctrine to all. It has been said that in this it realized the most cherished hopes of the policy of imperialism, and that, to say the least, it was a doctrine without which that policy could not indeed have been carried very far. But that is no argument against the immense value of the doctrine as a great constitutional asset.

2. THE POLITICAL STATUS OF PORTO RICANS: AMERICAN AND PORTO RICAN CITIZENSHIP

The general question relating to the political status and civil rights of the native inhabitants of newly acquired territory has been the subject of extended discussions and no little diversity of opinion among those qualified to speak authoritatively. This question, however, has never been before the Supreme Court, at least after the decisions in the so-called Insular Cases, and the only case in which it seems to have been presented at all was that of *Gonzalez* v. *Will-*

iams[100] which is another of them; but this case had reference only to the aspect of alienage and was considered from a purely statutory point of view. From the point of view of international law, the question would not seem to present any great difficulty or embarrassment, and, when properly construed, the case of *Gonzalez* v. *Williams* is undoubtedly an authority for the proposition that the inhabitants of newly acquired territories are not aliens in an international sense. It was indeed held in that case that a native inhabitant of Porto Rico, Isabella Gonzalez, was not an alien within the intent and meaning of the immigration laws; but it must be remembered that these laws particularly refer to foreigners in the *strict international sense.* The court specifically refers to this condition by declaring that "we cannot concede that the word alien, *as used in the Act of 1891,*[101] embraces the citizens of Porto Rico."

We think it clear that the Act relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof; and that citizens of Porto Rico, whose permanent allegiance is due to the United States; who live in the peace of the dominion of the United States; the organic law of whose domicile was enacted by the United States, and is enforced through officials sworn to support the Constitution of the United States, are not "aliens" and upon their arrival by water at the ports of our mainland are not "alien immigrants", within the intent and meaning of the Act of 1891.

It would seem, on the other hand, that if they are not aliens, they must be Americans, that is to say, nationals, for national is the antithesis of alien, in the international sense.[102] This proposition also

[100] 192 U. S. 1. [101] 26 Stat. 1084, c. 551.

[102] "Manifestly the nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal or otherwise as may be provided." Boyd *v.* Thayer, 143 U. S. 162. By Article IX of the Treaty of Paris, the right to retain Spanish nationality was specifically reserved to the natives of Spain residing in the Island, when complying with certain conditions stipulated therein. As to the Porto Ricans, no such right was reserved to them, but their civil rights and political status was to be determined by Congress. See also, in this connection, Coudert, Certainty and Justice, pp. 136 et seq., and Dudley P. McGovney in Columbia Law Rev., Vol. XI, p. 231.

finds support in the language employed by the court in the same case of *Gonzalez* v. *Williams*, which was, by the way, decided by a unanimous opinion of the court. In this case, Mr. Chief Justice Fuller, speaking for the court, quoted, evidently with approval, from an opinion of the Attorney General in respect to a provision of the Tariff Act of 1897[103] exempting "works of art, the production of American artists residing temporarily abroad", in which he said that a native inhabitant of Porto Rico temporarily residing in Paris was entitled to the benefit of that provision simply because he had become an American upon the acquisition and by virtue of the passage of the Foraker Act, which evidently was considered as an acceptance by Congress of the cession.

How far, however, will these considerations affect the political status and civil rights of the native inhabitants of newly acquired territories under the Constitution and laws of the United States is a question which has not received much attention from writers and commentators upon the subject. Judging, however, from the course adopted by the Executive Department of the Government in several cases presented, in which either the political status or the civil rights of these persons were involved under different laws of Congress, it is quite safe to infer that they are not considered as entirely devoid of rights which usually do not appertain to foreigners, but to Americans, not as citizens, but as nationals of this great Republic.

Considering the doctrine of non-incorporation and its scope with respect to the status of newly acquired territories and peoples, it would clearly seem that while these people may not be considered as aliens in an international sense, yet from a constitutional point of view, they are not citizens. In the case of Porto Rico it must be admitted that, as said by a distinguished lawyer and careful writer, the treaty of Paris did "whatever it could by its language to prevent the inference that there was any collective naturalization of the people" of the Island. "While a treaty may indeed collectively naturalize a whole people, nevertheless it is fair to assume that the treaty must intend such naturalization to take place. In this case,

[103] 30 Stat. 151, 203, c. 11.

the political status and civil rights having been reserved for the future action of Congress, it is fair to argue that no naturalization'' took place.[104]

There is no question, however, that as the inhabitants of newly acquired territory are not aliens in the technical sense of that word, the legal disabilities of alienage and the laws which apply to aliens do not affect them. It is apparent, nevertheless, that nationality would not of itself alone confer upon them the rights which appertain to citizenship. It has been contended with quite a profusion of data and arguments, that nationality and citizenship are convertible terms under the Constitution of the United States.[105] But, in view of the decisions in the Insular Cases and subsequent decisions of the Supreme Court, it would seem that, if this question should ever be presented to the consideration of this high tribunal in a proper case, the decision would not favor any such contentions, or even the further one of the same writer that the ''citizenship'' of these truly alien peoples would be a ''qualified'' American citizenship. To be consistent with the doctrine of non-incorporation, the Supreme Court could not, in our estimation, do otherwise than declare that these people are ''foreign'' to the United States in a domestic sense, in the sense that they have not been incorporated into the body of American citizenry.[106] And this probably would be so also both in the case of such inhabitants as were born at the time of the acquisition and such as are born afterwards, for the doctrine of non-incorporation leaves no room for the distinction of *ante nati* and *post nati* as an element in the construction of the opening clause of the Fourteenth Amendment to the Constitution. Thus, besides consistency, there would be clarity, uniformity and certainty.

As to their civil rights, it may be easily inferred that on account of the double aspect of their status, they would depend in each case upon the particular aspect involved; that is to say, whether the right

[104] Frederic R. Coudert, *op. cit.*, p. 148-149.

[105] "American Citizenship," by Dudley O. McGovney, of Tulane University, in Columbia Law Rev., Vol. XI, p. 231.

[106] See dissenting opinion of Mr. Justice White in Dooley *v.* United States, 182 U. S. 222.

involved their status as nationals in the international sense, or whether it involved, on the contrary, their status as "outsiders, foreigners, or aliens," in the constitutional sense.

Taking into consideration this double aspect of the status of the native inhabitants of newly acquired territories, and referring to the difficulty of finding a proper designation of this status under existing vocabularies, another writer of note has felt justified in saying that "perhaps it would be both appropriate and timely to derive the term 'appurtezens' from the word appurtenant used by the court in defining the position of the Insular territory, just as the term citizen has been derived from the word city."[107]

While this question concerning the status of the native inhabitants of newly acquired territories may seem always interesting and involving a good deal of national importance in the United States, with respect to the native inhabitants of Porto Rico it is merely an academic question having only a historical value, on account of the recent passage by Congress of the so-called Jones-Shafroth Act by which the privilege of American citizenship is extended to them.[108] It should be said, however, that the practical result of the extraordinary status of the native inhabitants of Porto Rico previous to the passage of that law worked in a good many instances very grievous injustice. For instance, a Porto Rican who had graduated from an American University, say of New York or Vermont, could not practice before the courts of those States, merely because he was not a citizen of the United States.[109] And where the right to vote was made to depend directly on the status of citizenship, he could not exercise the franchise even though he was burdened with practically all the duties of a citizen. Porto Ricans could not then enter the Diplomatic or Consular service of the United States, nor could they sue in a Federal Court, nor claim any immunity or privilege under the Constitution, except those which are insured to every person by that instrument. If residing abroad, he was, however, entitled to the protection of the

[107] A. J. Lien, Privileges and Immunities of Citizens of the United States, pp. 26-27.

[108] *Supra*, note 81.

[109] The same could be said as to the practice of other professions, such as that of medicine, pharmacy, etc.

United States.[110] It may be well to remember that under the American system of government the idea of citizenship involves the concept of a double citizenship: citizenship of the United States and citizenship of the individual State. Carrying this concept one step further, the inhabitants of the territories are in the same way deemed to be citizens thereof, whether the said territory is incorporated or not. Thus, the people of Porto Rico may be properly deemed to be citizens of Porto Rico. However, the Foraker Act provided that all inhabitants continuing to reside therein who were Spanish subjects on April 11, 1899, and then resided in the Island, and their children born subsequent thereto, were to be deemed and held to be citizens of Porto Rico, except such as had elected to preserve their Spanish allegiance on that date, in accordance with the provisions of the said treaty.

A distinguished Porto Rican lawyer and writer, the late José de Diego, who was, until his recent demise, the undisputed leader of the independentist movement in Porto Rico, seriously contended[111] that this particular provision of the old Organic Act of Porto Rico expressly recognized a Porto Rican citizenship, wholly incompatible with American citizenship and clearly declaratory of a Porto Rican sovereignty which it was, inferentially, the intention of Congress to recognize, in thus fixing the political status of that part of the inhabitants of the Island. However noble, patriotic and commendable, from a Porto Rican point of view, this contention may be, it could not indeed stand the test of even a casual examination from a purely American point of view. That such a contention is wrong was amply shown by the passage of the Jones-Shafroth Act, by which, while expressly preserving to the Islanders who should so prefer the self-same Porto Rican citizenship which had been deemed to exist under the Foraker Act, Congress extended to Porto Ricans the privilege of American citizenship, which is incompatible with citizenship under a different sovereignty than that of the United States, unless it is State citizenship. Territorial citizenship implies indeed a sovereignty of the territory; but this sovereignty could not be in conflict with the

[110] Section 7 of the so-called Foraker Act, *supra*, specifically provided that Porto Ricans were entitled to the protection of the United States.

[111] *Nuevas Campañas*, 207-213.

sovereignty of the United States and must be limited to the powers granted to it by the Organic Act which brings it into existence. Porto Rican citizenship then, let it be said clearly, is here meant in an especial, purely statutory sense, in the sense of the Act, the evident purpose of which was merely to designate that part of the people of Porto Rico who could not properly be designated as American citizens within the body politic created by the said Act, and nothing more.[112] As to an alleged Porto Rican sovereignty recognized, as Mr. de Diego said, by the Treaty of Paris, we have already seen that the treaty does not do any such thing.[113] As to the policy of a recognition by Congress of the sovereignty of the people of Porto Rico as an independent government and, therefore, of a Porto Rican citizenship in an international sense, it may be observed that this is a question which involves a good many considerations of a national and international character, the study of which should be undertaken as soon as possible by those whose duty it is to do so. The same may be said as to the advisability of finally incorporating the Island as a full-fledged State of the Union, or establishing it as a fully self-governing people under the continued sovereignty of the United States.

Respecting the present status of Porto Ricans, there can be no doubt that they are both citizens of Porto Rico and citizens of the United States. It must be observed, however, that Porto Rican citizenship is a purely local status depending, as all local citizenship in the United States, upon residence in the place. Thus when a Porto Rican acquires a residence in another place[113a] he ceases for all legal

[112] See, however, The People of Porto Rico *v.* Rosaly, *supra.*

[113] *Supra,* p. 485-486.

[113a] Reily *v.* Lamar, 2 Cranch 357; The Dos Hermanos, 2 Wheat. 98.

There must be an actual, not pretended, change of domicil; in other words, the removal must be "a real one, *animo manendi,* and not merely ostensible." Case *v.* Clarke, 5 Mason, 70. The intention and the act must concur in order to effect such a change of domicil as constitutes a change of citizenship. In Ennis *v.* Smith, 14 How. 400, 423, it was said that "a removal which does not contemplate an absence from the former domicil for an indefinite and uncertain time is not a change of it," and that while it was difficult to lay down any rule under which every instance of residence could be brought which may make a domicil of choice, "there must be, to constitute it, actual residence in the place, with the intention that it is to be a principal and permanent residence." Morris *v.* Gilner, 129 U. S. 328.

purposes to be a citizen of Porto Rico. In the same way, when he returns to reside in the Island he becomes again a citizen of Porto Rico. The same may be said of any American citizen who chooses to reside in or to depart from the Island. He will be a citizen of Porto Rico as long as he continues to reside in the Island. If he leaves with an intention to reside somewhere else, he ceases automatically to be a citizen of Porto Rico. It must be also observed, on the other hand, that American citizenship is of a universal character and accompanies the person wherever he goes. Thus a Porto Rican is just as much an American citizen while residing in Porto Rico as when he resides in any of the States or abroad. And his status in this respect is the same as that of any native-born citizen of the United States.

3. THE CIVIL AND POLITICAL RIGHTS OF PORTO RICANS UNDER THE AMERICAN SYSTEM OF GOVERNMENT

Considering, for our present purpose, the concept of citizenship as generally understood under American institutions and laws, it may be said that corresponding to this double aspect of citizenship, there is a separate and distinct range of privileges and immunities, guaranteed in each case by the government under which they arise. Thus Porto Rican citizenship involves a set of rights and obligations peculiarly local in their nature and depending for their existence and enforcement on the provisions of the Organic Act of the Island and the statutory laws enacted by the Porto Rican legislature thereunder. American citizenship, on the other hand, involves another set of rights and obligations, not necessarily different from the other, but of a universal and more comprehensive nature. These rights and obligations, which are implied in American citizenship depend for their existence and enforcement on the provisions of the Constitution and laws of the United States and the character of American institutions. It is then to these sources that the citizen must go in order to ascertain his rights and obligations under these two governments.

Respecting the civil and political rights of Porto Ricans under the American system of government, it may be said that, aside from any question relative to the existence or enforcement of a given right,

its enjoyment and exercise by the citizen may in many cases depend upon his local personal status or the international or constitutional status of the place wherein he resides. Thus, for instance, the right of suffrage may be made to depend by the local laws on various personal qualifications, such as sex, age, education, etc., and in this manner women, minors, illiterate persons, and lunatics, for example, although citizens, may be legally incompetent to exercise this right. Some able and learned writers have found in these persons who are thus deprived of the exercise of rights pertaining to citizenship, an argument to contend that there are, under the Constitution, qualified citizens or subjects. We submit that they are *disqualified persons* and that their disqualification has nothing to do with their citizenship. They are disqualified in their *personal status* as voters, eligibles for office, etc. The state, as a question of public policy, deprives the person, not the citizen, of the exercise of a given right, not because of any defect or qualification in his citizenship, but rather through a legal insufficiency in his personal qualification, which obliterates in him the legal capacity required for the intelligent exercise of that right which ordinarily belongs to him as a citizen.

Then again, the citizen may be unable to exercise a given right, as already said, on account of the international or constitutional status of the place wherein he resides, and thus, for instance, the inhabitants of Porto Rico are unable to take a direct part in the conduct of the national government, which is a peculiar right of the citizen. But this does not result from any inferiority or qualifications in their citizenship, but merely from a constitutional condition adversely affecting the status of Porto Rico. This proposition will be readily admitted when it is considered that, under the Constitution, the States and their people only, through their Senators and Representatives in Congress, have exclusive participation in the making of the national laws. So too, under the Constitution, the States and their people only have exclusive participation in the election of the President, who as the Chief Executive, is entrusted with the execution of the laws, and otherwise directs and controls, either by himself, as such Chief Executive, or by and with the advice and consent of the Senate, the general administration of the government and the conduct of foreign

relations, or, as Commander-in-Chief of the Army and Navy of the United States, the military activities thereof in case of war. The same is true as to the Vice-President, who substitutes for the President in the cases of emergency provided by the Constitution of the United States. It follows, therefore, that the inhabitants of Porto Rico, independent of their status as full-fledged citizens of the United States, and by virtue of the fact that Porto Rico is not a State, are unable to exercise such political rights as might otherwise belong to them as American citizens. This inability, of course, disappears for the individual Porto Rican as soon as he acquires residence within a State, because, as we will see hereinafter, by virtue of the Fourteenth Amendment of the Constitution he would become a citizen of such a State and therefore be entitled to the enjoyment of all rights, privileges and immunities as may appertain to him not only as a citizen of the United States, but also as a citizen of that particular State. Thus, conversely, while as a resident of a State he may be privileged, as a member of that body politic, to take part in that State's politics, as well as in the national politics, yet as a citizen of Porto Rico, as an American citizen residing in the Island, he can take a part and effective interest only in the local politics of Porto Rico, and not in the national politics of the United States.[114]

This apparently continued exclusion of the Porto Rican from taking part in the active political life of the nation has led some misinformed or disappointed persons to contend that the American citizenship granted to the Porto Ricans is a base, adulterated, and inferior citizenship of the United States, which merely imposes upon them burdensome obligations of citizenship,[115] without an adequate compensation in the enjoyment and exercise of rights which are con-

[114] In the case of Am. Ins. Co. *v.* Canter (1 Pet. 511), referring to the admission of the inhabitants of Florida to the enjoyment of the privileges, rights and immunities of citizens of the United States, Chief Justice Marshall said: "They do not, however, participate in political power; they do not share in the government, till Florida shall become a State."

"The right of suffrage is a right which emanates from the State alone, irrespective of Federal interference." Minor *v.* Happersett, 21 Wall. 162.

[115] Porto Rico contributed more soldiers during the late war than the District of Columbia and all the Territories combined.

sidered as the most treasured possessions of the citizen. However true this contention may be in its ultimate results upon the Porto Ricans who are residing on the Island, it cannot be denied that there is, under the Constitution, only one legitimate citizenship of the United States, and that is the one kind of citizenship which has been extended to the Porto Ricans by the Jones-Shafroth Act.

As already stated, this condition, while thus adversely affecting the rights of Porto Ricans, finds its logical explanation only in the character of American institutions, and in the fact that Porto Rico is not a State of the Union. And let it be remembered here that this peculiar condition does not affect the *native* inhabitants of Porto Rico only, but it applies equally well to all such other American citizens who happen to be residing on the Island—and for that matter, in any other place outside of the individual States. It is to be remembered also, that the inhabitants of the so-called Territories are in no better condition, in this respect, than the Porto Ricans themselves. The District of Columbia is in the same position. It follows, therefore, that, contrary to unjustifiable assertions made in this respect, there is not in this condition any special discrimination or prejudice against the people of Porto Rico as such. It is a peculiar condition of American institutions, which finds no remedy except in Statehood.

It must be conceded, however, that so far as political rights of a national character are concerned, Porto Ricans are not much better off to-day than they were before the privilege of American citizenship was bestowed upon them; for while it may be true that any Porto Rican who removes into a State of the Union may acquire a direct participation in the National Government, yet with respect to the bulk of Porto Ricans remaining in the Island, the robe of citizenship may be considered by them as an empty honor without practical results, simply because their political rights as citizens will not take shape in a practical manner so long as their country is kept in the condition of a mere subservient piece of territorial property with no constitutional rights of representation in the making of the national laws.

On the other hand, it is to be observed that, as American citizens,

Porto Ricans are entitled to emigrate to foreign lands, or even to expatriate themselves by swearing allegiance to another sovereign; they may also, as such citizens, remove into the United States and acquire residence and citizenship in any State or Territory thereof,[116] or they may still decide to remain in Porto Rico and reside permanently therein. It is to be observed also that while the individual Porto Rican may choose to reside in one place or another, the extent and enforcement of his rights as such an American citizen are, of necessity, more or less controlled, as already suggested, by the status of his place of residence in respect to the United States. Thus, his rights as such citizen may be viewed from these four different points of view: (a) When residing in a foreign country; (b) when residing in a State of the Union; (c) when residing in a Territory of the United States; (d) when residing in Porto Rico.

(a) When residing abroad, there is no question that Porto Ricans, as American citizens, are entitled to demand full protection from the National Government. In this respect the words of Chief Justice Marshall, in 1804, in the case of *Murray* v. *Schooner Charming Betsy*,[117] are pertinent:

> The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of our government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection, and the interposition of the American Government in his favor would be considered a justifiable interposition.

What this protection of the citizens abroad means and when and on what circumstances and to what extent it will be accorded by the interposition of the Government of the United States is another question which lies quite outside the scope of this article. It may be said, however, that in venturing to go abroad, the citizen enters into the sphere of international law and diplomacy, and mainly for this reason, he cannot always claim successfully the interposition of

[116] "Every citizen of the United States is also a citizen of a State or territory. He may be said to owe allegiance to two sovereigns." By Justice Grier, in Moore *v.* Illinois, 14 How. 19. See also Boyds *v.* Thayer, 143 U. S. 161.

[117] 2 Cranch 64, 120.

his own government if he feels aggrieved or injured by the action or inaction of the foreign government. Moreover, in this matter of diplomatic protection of citizens abroad, it is to be observed that the action of the Department of State is, as a rule, controlled by a good many reasons affecting not only the legitimate rights of the citizen or citizens concerned, but also the national and international policies and superior interests of the United States as a nation. It follows, therefore, that this is a matter of much delicacy and discretion depending for a determination on all the surrounding circumstances of the case which the Department is to weigh and decide.[118] It may not be entirely amiss to state here that in this matter of diplomatic interposition by the Department of State in favor of American citizens abroad, there is no distinction whatever to be made between a Porto Rican and a Virginian, a Californian, or a New Yorker. In this question, as in any other relating to the privileges and immunities of American citizenship, all citizens of the United States are exactly upon the same legal footing.

(b) When residing in one of the States of the Union, the individual Porto Rican is, as already stated, invested with the full status of a citizen of that State. In an early case,[119] decided in 1832, Mr. Chief Justice Marshall said that "a citizen of the United States, residing in any State of the Union, is a citizen of that State." And this view was later incorporated into the opening clause of the Fourteenth Amendment to the Constitution: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

In this respect it may be pertinent to quote the words of Mr. Justice Miller in the Slaughter House Cases.[120] Referring to the privileges and immunities secured by the Constitution to the citizens of the United States, he said: "One of these privileges is conferred

[118] See Edwin M. Borchard, "Basic Elements of Diplomatic Protection of Citizens Abroad," in this JOURNAL, Vol. VII, pp. 497-520. See also in this connection a very interesting article by Alpheus Henry Snow in this JOURNAL, Vol. VIII, pp. 191-212.

[119] Gassies *v.* Ballon, 6 Pet. 761.

[120] 16 Wall. 79.

by the very Article under consideration.[121] It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona fide* residence therein, with the same rights as other citizens of that State."

As a citizen of the State wherein he resides, the individual Porto Rican must look to the Constitution and laws of that State in order to determine the extent of his rights therein. It must be remembered, however, that he is also entitled, under the protection of the National Government, to the enjoyment and exercise of these privileges and immunities which arise out of his American citizenship.[122]

The right of acquiring residence and citizenship in any State of the Union is indeed one of the greatest privileges of the citizens of the United States. In this respect it is to be observed that the individual Porto Rican who moves into any of the States, say, for instance, New York, with the intention of residing therein, acquires *ipso facto* the legal status of a New Yorker. He is therefore entitled and privileged to do, under the same circumstances and upon the same conditions, any thing which all other New Yorkers may do under the Constitution and laws of that State. He is, for all civil and political purposes, exactly the equal of the native citizens of that State, and thus he may vote and hold public office, and take part in the whole civil and political life of the State without molestation, according to law. There may be, however, some constitutional or statutory conditions prescribed for the entire community affecting a whole class of citizens, in which he may be included, and affecting his personal status, which may deprive him of the enjoyment or exercise of a given right or privilege. Thus, for instance, if he were a minor, an idiot or a convict, or if he did not possess the necessary qualifications for the purpose, he would not be entitled to the political franchise. But surely he would not be deprived of any privilege or immunity belonging to him as a citizen because of any defect or inferiority in his citizenship, and much less because of the fact that he is a Porto Rican.

In connection with the electoral franchise as affecting a direct

[121] Fourteenth Amendment to the Constitution, Sec. 1.

[122] For a comprehensive and yet brief study of the privileges and immunities of the citizens of the United States, see A. J. Lien, *op. cit., supra*, note 107.

participation in the national politics, it seems interesting to observe that, although the right of suffrage is not one of the necessary privileges of a citizen of a State or of the United States,[123] when the individual Porto Rican, as a citizen of the State wherein he resides, is duly qualified to vote at an election at which members of Congress or presidential electors are being selected, he has the right, as a citizen of the United States, to exercise that privilege freely and without molestation. Referring to the general subject of the privileges and immunities secured by the Constitution to the citizens of the United States, said Mr. Justice Miller in a famous case:

> It is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States. The office, if it be properly called an office, is created by that Constitution and by that alone. . . . The States in prescribing the qualifications of voters for the most numerous branch of their own legislature, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualifications for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualifications thus furnished as the qualifications of its own electors for members of Congress. It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of that State.[124]

(c) When residing in a Territory of the United States, the individual Porto Rican is also, according to the established practice of the Government and even the decisions of the Supreme Court, a citizen of that Territory.[125] He enjoys therefore the same privileges and immunities secured to such citizens by the Organic Act and laws of the said Territory.

In this connection it may be useful to notice a fundamental distinction in the extent of the powers of the Federal Government, which must necessarily affect the rights of the citizen residing therein. This distinction is founded upon the equally fundamental distinction be-

[123] "The right of suffrage is not one of the necessary privileges of citizens of a State or of the United States." Minor *v.* Happersett, 21 Wall. 162.

[124] Ex parte Yarbrough, 110 U. S. 651, 662.

[125] Moore *v.* Illinois, 14 How. 19; Boyd *v.* Thayer, 143 U. S. 161.

tween the powers of the National Government and those which belong to the Governments of the various States,—that while the former is a government of enumerated powers and specific restrictions, the latter are governments of unlimited powers, except only such as have been delegated to the National Government or reserved by the people of the States to themselves. Thus, while the National Government must look to its Constitution to ascertain the extent of its powers, the State Governments do not have to do that, but they look to the Constitution of the United States and to their own Constitutions to ascertain merely the extent of the restrictions imposed by those instruments upon the exercise of their respective unlimited powers. There is no question that within their respective spheres of governmental powers, the National and State Governments are quite exclusive of each other and possess all the essential attributes of complete sovereignty for the successful discharge of their respective functions. Thus they can fix the political status and civil rights of their respective citizens within the extent of their respective powers.

Returning now to the main point under consideration, it may be safely assumed that by virtue of a constitutional necessity arising from the very nature of the case, in the government of the territory of the United States, outside of the States, Congress over and above its constitutional functions as the National Legislature, occupies, as to the territories, the same position as the State legislatures occupy with respect to their respective states.[126] And it must follow therefrom that in legislating for the territories the powers of Congress are quite as unlimited as the powers of the State legislatures are.[127] But carrying the comparison still somewhat further, the question arises whether in the exercise of its functions as a territorial government, the National Government is to be controlled by the restrictions imposed upon its national powers by the Federal Constitution,

[126] "Congress may legislate for territories as a State does for its municipal organizations." First National Bank *v.* Yankton County, 101 U. S. 129.

[127] "Congress has as full legislative power over the territories as a State has over its municipal corporations." Utter *v.* Franklin, 172 U. S. 416. Furthermore, "in legislating for the territories Congress exercises the combined powers of the General and State Governments. Am. Ins. Co. *v.* Canter, 1 Pet. 511.

just as the State Governments are controlled by their own Constitutions and the Constitution of the United States.

Aside from some loose language used in the adjudicated cases to the effect that the powers of Congress in legislating for the territories are plenary, absolute and complete, there is no question that, so far as those provisions of the Federal Constitution which absolutely deprive the National Government of all authority to act upon certain specific subjects are concerned, the powers of that Government are controlled and restricted by the said provisions, irrespective of time and place and are, therefore, controlling in the territories as well as anywhere else.[128]

But what about the other restrictions imposed upon the Federal Government by the Constitution of the United States? Do they apply in the Territories as well as in the States? Here Mr. Justice Brown, as we have already seen in the consideration of the case of *Downes* v. *Bidwell*,[129] said most emphatically No! Mr. Justice White said that the whole thing depends upon the status of the territory in question. These two different answers to the same question involve, of course, two conflicting theories of constitutional interpretation. Mr. Justice Brown's theory was that the Constitution does not apply to the territories unless and in so far as Congress shall in its wisdom see fit to extend it to them; this theory was, however, rejected by all the other members of the court. Mr. Justice White's theory was that, while the Constitution was intended to cover all parts of the United States, as composed of States and Territories, yet, in the nature of things, it could not apply to such territories as had not been as yet incorporated into the United States as integral parts thereof. It is evident, however, that, as to those other territories which have been already incorporated into the United States, like Alaska or the Hawaiian Islands, Congress will be effectively controlled by the Constitution when legislating for them.

The first proposition was peculiarly illustrated in the case of *Hawaii* v. *Mankichi*[130] where it was held that previous to the incorporation of those Islands into the United States, "the provisions of

[128] *Infra*, p. 522-3. See also, in this connection, Am. Ins. Co. *v.* Canter, *supra*.
[129] *Supra*, p. 488.
[130] 190 U. S. 197.

the Constitution as to grand and petit juries were not applicable to them.''[131] The second proposition was also illustrated in a more recent Alaskan case, decided by the Supreme Court, in which it was held that since Alaska was an incorporated territory, the Constitution was applicable thereto, and that under the Fifth and Sixth Amendments Congress cannot deprive one there accused of a misdemeanor of trial by a common law jury, and that Section 171 of the Alaskan Code, in so far as it provided a jury composed of six persons for the trial of misdemeanors, was unconstitutional and void.[132]

It follows, therefore, that although effectively subjected to the complete and unlimited governmental powers of the National Government as his immediate sovereign, the individual Porto Rican residing in an incorporated Territory of the United States, such as Alaska or Hawaii, will be entirely protected in his rights as a citizen both of that Territory and of the United States against any encroachment by Congress thereon, in so far as the provisions of the Constitution of the United States may be applicable throughout the United States.

(d) With regard to the fourth and last point of view, namely, Porto Ricans residing in Porto Rico, other constitutional conditions are to be considered. In the first place, in view of the doctrine of non-incorporation,[133] Porto Rico is not a part of the United States, and, therefore, the provisions of the Constitution do not apply to the inhabitants of the Island except in so far as they operate to deprive Congress of power to act at all upon any given matter.

While it may be said that Congress has full powers to govern that Island without any constitutional restrictions whatever in respect to such provisions of the Constitution as regulate the powers granted to it by that instrument, it must not be inferred from this that Porto Ricans residing in the Island are entirely devoid of rights under the Constitution which Congress is not bound to respect. In this connection it may be useful to quote some excerpts from the

[131] To the same effect are Dorr *v.* U. S., 195 U. S. 138, which is a Philippine case, and The People of Porto Rico et al. *v.* Tapia, and The People of Porto Rico *v.* Muratti, *supra.*

[132] Rassmussen *v.* U. S., 197 U. S. 516.

[133] *Supra*, p. 499.

opinion of Mr. Justice Brown in the case of *Downes* v. *Bidwell,* which, although referring to a previous condition of Porto Ricans as mere inhabitants of newly acquired territory, must apply with greater force to their present status as citizens of the United States. Said this distinguished judge:

To sustain the judgment in the case under consideration it by no means becomes necessary to show that none of the articles of the Constitution apply to the Island of Porto Rico. There is a clear distinction between such prohibitions as go to the very root of the power of Congress to act at all, irrespective of time or place, and such as are operative only throughout the United States or among the several States. . . .

We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinions and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage, and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals.

Whatever may be finally decided by the American people as to the *status* of these Islands and their inhabitants—whether they shall be introduced into the sisterhood of States or be permitted to form independent governments—it does not follow that, in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty and property. This has been frequently held by this court in respect to the Chinese, even when aliens, not possessed of the political rights of citizens of the United States. We do not desire, however, to anticipate the difficulties which would naturally arise in this connection, but merely to disclaim any intention to hold that the inhabitants of these territories are subject to an unrestrained power on the part of Congress to deal with them upon the theory that they have no rights which it is bound to respect.

Mr. Justice White's remarks upon this question are also very important and clear. In discussing this subject with respect to the doctrine by him announced and sustained, he said:

> Albeit, as a general rule, the *status* of a particular territory has to be taken in view when the applicability of any provision of the Constitution is questioned, it does not follow when the Constitution has absolutely withheld from the government all power on a given subject, that such an inquiry is necessary. Undoubtedly, there are general prohibitions in the Constitution in favor of the liberty and property of the citizen which are not mere regulations as to the form and manner in which a conceded power may be exercised, but which are an absolute denial of all authority under any circumstances or conditions to do particular acts. In the nature of things, limitations of this character cannot be under any circumstances transcended, because of the complete absence of power.
>
> The distinction which exists between the two characters of restrictions, those which regulate a granted power and those which withdraw all authority on a particular subject, has in effect been always conceded, even by those who most strenuously insisted on the erroneous principle that the Constitution did not apply to Congress in legislating for the territories, and was not operative on such districts of country. . . .
>
> There is in reason then no room in this case to contend that Congress can destroy the liberties of the people of Porto Rico by exercising in their regard powers against freedom and justice which the Constitution has absolutely denied.

There is no doubt, however, that in the matter of such rights as are not secured to the citizen by specific prohibitions of the Constitution operating upon the powers of Congress to act at all irrespective of time and place, the civil and political rights of Porto Ricans residing in the Island are to be determined and measured only by the Organic Act which Congress shall in its wisdom be pleased to give to the Island,[134] and by the laws which may be enacted by the Legislature of Porto Rico thereunder.[135]

[134] See Murphy *v.* Ramsey, 114 U. S. 15, cited in Downes *v.* Bidwell, *supra.*

[135] Owing to the restrictive nature of this JOURNAL, we must leave for consideration elsewhere the Government of Porto Rico under Spain and the two Organic Acts so far enacted by Congress for the Island, as well as the Porto Rican problem which is now confronting the American people, and its possible solution in the near future. See "Some Historical and Political Aspects of the Government of Porto Rico," in *The Hispanic-American Historical Review*, Vol. II, No. 4.

As showing the real attitude of Congress towards the inhabitants of Porto Rico in respect to these matters, reference will be made to the Bill of Rights inserted in the recent Organic Act adopted for the Island, in which it is expressly provided:

That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

That in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

That no law impairing the obligation of contracts shall be enacted.

That no persons shall be imprisoned for debt.

That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion, insurrection, or invasion, the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor, whenever during such period the necessity for such suspension shall exist.

That no *ex post facto* law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law.

Nothing contained in this Act shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health or safety of employees.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust under the Government of Porto Rico shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign state, or any officer thereof.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

That slavery shall not exist in Porto Rico.

That involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall not exist in Porto Rico.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed, and that no political or religious test other than an oath to support the Constitution of the United States and the laws of Porto Rico shall be required as a qualification to any office or public trust under the Government of Porto Rico.

That no public money or property shall ever be appropriated, applied, donated, used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignatary as such, or for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of Porto Rico. Contracting of polygamous or plural marriages hereafter is prohibited.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law, and on warrant drawn by the proper officer in pursuance thereof.

That the rule of taxation in Porto Rico shall be uniform.

That all money derived from any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only, except upon the approval of the President of the United States.

That eight hours shall constitute a day's work in all cases of employment of laborers and mechanics by and on behalf of the Government of the Island on public works, except in cases of emergency.

That the employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.

PEDRO CAPÓ-RODRÍGUEZ.